

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
BOARD FOR PROFESSIONAL ENGINEERS AND LAND SURVEYORS
INITIAL STATEMENT OF REASONS

Hearing Date: June 14, 2002

Subject Matter of Proposed Regulations: Code of Professional Conduct

Sections Affected: The proposed regulation would adopt sections 475 and 476 of Title 16, Division 5 of the California Code of Regulations

Specific Purpose of Each Adoption, Amendment, or Repeal

The primary objective of the proposed regulations is to protect and safeguard the health, safety, welfare, and property of the public. The specific purpose of this proposal is to set professional standards with regard to competency, representation, conflict of interest, confidential information, document submittals, and required notifications.

Factual Basis

Effective January 1, 2001, Assembly Bill (AB) 2629 (Chap. 976, Stats. 2000), amended Business and Professions Code sections 6716, 6775, 8710, and 8780 to authorize the Board for Professional Engineers and Land Surveyors to adopt rules and regulations of professional conduct for professional engineers and professional land surveyors. A violation of this Code of Professional Conduct in the practice of professional engineering or professional land surveying constitutes unprofessional conduct and is grounds for disciplinary action pursuant to Sections 6775 and 8780 of the Code.

Compliance with Laws Applicable to a Project

A licensee shall comply with the laws, codes, ordinances, rules, and regulations applicable to a project when undertaking or performing professional services on that project. While a licensee is licensed to undertake any project that falls within the definitions of their particular discipline, as a professional, the licensee must understand and be limited by the limitations of his or her own competency and knowledge. Where a licensee lacks experience, the regulations suppose that he or she will retain consultants who can appropriately supplement his or her own competency.

Conflict of Interest

When a client retains a licensee, there is an expectation by the client that the licensee will strive to achieve the client's best interest and provide the client with undivided loyalty. If a licensee solicits or accepts compensation from suppliers in return for specifying their materials, the licensee has demonstrated that he or she cannot provide the client with undivided loyalty and the

client's best interests are compromised. When a licensee provides professional services for two or more clients on a project, the licensee shall disclose in writing to the clients and project owners his or her relationship to those clients. This regulation recognizes that in some circumstances, a licensee may receive compensation for services from more than one party involved in a project; but it also provides that such circumstances are unacceptable unless fully disclosed to by the involved parties in writing. It requires disclosure by the licensee of any interest that would affect the licensee's performance.

Representations

The proposed regulations require a licensee to accurately represent his or her professional qualifications and services which are within his or her field of competence. Because of the wide variety of projects and specialization that exists in the professions of engineering and land surveying, it is important that consumers are aware of the scope and limits of a licensee's knowledge base. Accurate representation of engineering and land surveying data and its relative significance is essential to public health and safety.

Copyright Infringement

A licensee shall not knowingly infringe upon the copyrighted work of other licensees or design professionals.

Confidential Information

Confidential information obtained by a licensee, in his or her professional capacity, concerning a client, employer, or other related party shall not be disclosed by the licensee without permission. However, exceptions are made for disclosures required by law, in response to subpoena or summons, or official requests from a governmental agency, regarding illegal conduct, when providing evidence to the Board, or upon discovering a hazard with the licensee's field of professional expertise which may threaten the health, safety, and welfare of the public.

Document Submittal

A licensee shall not misrepresent the completeness of the professional documents he or she submits to a governmental agency, client, or any other involved parties.

Underlying Data

Technical, theoretical or empirical studies or reports relied upon (if any):

1. Minutes and Agenda Item from the December 14, 2000, Board Meeting
2. Minutes and Agenda Item from the January 25, 2001, Enforcement Committee Meeting
3. Enforcement Committee Meeting Report dated April 26, 2001
4. Minutes and Agenda Item from the June 7, 2001, Board Meeting
5. Minutes and Agenda Item from the July 27, 2001, Enforcement Committee Meeting
6. Minutes and Agenda Item from the September 6, 2001, Board Meeting
7. Minutes and Agenda Item from the October 18, 2001, Board Meeting
8. Minutes and Agenda Item from the December 13-14, 2001, Enforcement Committee and Board Meetings
9. Minutes and Agenda Item from the January 24-25, 2002, Board Meeting

10. Draft Minutes and Agenda Item from the March 7-8, 2002, Board Meeting
It is anticipated that these Draft Minutes will be approved by the Board at its June 13, 2002, meeting with no changes. The final, approved minutes will be included in the final rulemaking file. Should any changes be made to the Draft Minutes prior to approval, the addition of such modified minutes to the rulemaking file would be noticed for public comment.
11. Professional Standards for the Board for Geologists and Geophysicists
12. Rules of Professional Conduct for the California Architects Board
13. Model Rules of Professional Conduct for the National Council of Examiners for Engineering and Surveying (NCEES)
14. Code of Ethics for the National Society of Professional Engineers (NSPE)
15. Creed and Canons for the National Society of Professional Surveyors (NSPS)
16. Code of Ethics for the Institute of Electrical and Electronics Engineers (IEEE)
17. Code of Ethics for the American Society of Civil Engineers (ASCE)
18. Code of Ethics for the California Real Estate Inspection Association (CREIA)
19. Code of Ethics for California Contractors
20. Code of Ethics for the State of Arizona
21. Code of Ethics for the State of Nevada
22. Code of Ethics for the State of Texas
23. Code of Ethics for the State of Utah

A copy of this information is available upon request

Business Impact

This regulation will not have a significant adverse economic impact on businesses.

Specific Technologies or Equipment

This regulation does not mandate the use of specific technologies or equipment.

Consideration of Alternatives

No reasonable alternative which was considered or that has been otherwise identified and brought to the attention of the Board would be either more effective in carrying out the purpose for which the action is proposed or would be effective as and less burdensome to affected private persons than the proposed regulatory action.

Set forth below are the alternatives which were considered and the reasons each alternative was rejected:

The only alternative to this proposal would be non-adoption of regulations for a Code of Professional Conduct. However, this is not a reasonable alternative because the Joint Legislative Sunset Review Committee (JLSRC), as part of its review of the Board in 1999, strongly recommended that the Board adopt such regulations. The Board could cease to exist if it failed to follow the JLSRC's recommendations.